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U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

GLACIER SALES AND ENGINEERING, LLC
a Florida corporation,
Plaintiff

v.

EAGLE PLASTICS CORPORATION
a Michigan corporation
Defendant

Case: 2:07-cv-13806
Assigned To: Hood, Denise Page
Referral Judge: Komives, Paul J
Filed: 09-10-2007 At 04:27 PM
CMP GLACIER SALES V. EAGLE PLASTICS CORP (DA)

David W. Moore, PC
David W. Moore (P23326)
Attorney for Plaintiff
900 Wilshire Dr., Ste. 202
Troy, MI 48084
(248) 816-8280

EMERGENCY VERIFIED
MOTION FOR POSSESSION PENDING FINAL JUDGMENT

NOW COMES PLAINTFF, by and through its attorneys, pursuant to FRCP Rule 64, MCR Rule 3.105 and MCL 600.2920, and in support of its emergency motion for possession pending final judgment, states:

1. Glacier has filed its verified complaint showing the following:

   a. Glacier owned or possessed certain property which it allowed Eagle to use for the production by Eagle of various plastic products, for Glacier's customers, more readily identified as Exhibit 2 and Exhibit 3 of the verified complaint attached hereto as **Exhibit 1**.

   b. The products to be made by Eagle were for Glacier's customers, in fulfillment of Glacier's contractual obligations.

c. After Eagle had possession of the property provided by Glacier, Eagle:

(1) became insolvent and/or could not obtain financing for manufacturing of Glacier's products and has ceased operations for Glacier;

(2) failed to maintain proper insurance coverage as agreed;

(3) terminated substantially all of its employees;

(4) has ceased substantially all molding/manufacturing activity at its facilities;

(5) has refused access to its facilities by Glacier's representative;

(6) failed to provide timely electrical service to Glacier's Machinery;

(7) failed to provide timely and technically correct water hook ups to Glacier's Machinery;

(8) failed to timely provide approved quality product;

(9) failed to timely deliver product;

(10) failed to provide timely production schedules;

(11) failed to provide timely inventory schedules;

(12) failed to provide adequate support for Glacier's production needs; and

(13) failed to properly maintain and secure Glacier's Machinery and Molds such that Glacier was advised of possible tampering or sabotage to the property requested returned to Glacier **[Exhibit 2]**.

d. Glacier gave notice that it was terminating the Agreement between the parties.

2. Eagle had agreed to an immediate writ of replevin in its agreement with Glacier. It also waived notice and agreed that no bond be posted for the writ. [**Exhibit 3,** (Par. 7.4(b) of Exhibit 1 of the verified complaint]. (Emphasis added).

3. Glacier needs the above Machinery, Molds and Inventory as they are essential to Glacier's ability to have products made for its customers and to fulfill its contractual obligations.

4. Glacier cannot conduct business contracted for and contract for new business without the Machinery, Molds and inventory in the possession of Eagle.

5. Glacier has a present possessory interest in the Machinery, Molds and inventory.

6. All Machinery, Molds and inventory are transportable and otherwise depreciable in value. Glacier is fearful and apprehensive that, unless it is granted possession pending final judgment, the property might be moved, lost, conveyed, stolen or otherwise used in a way to substantially impair their value before final judgment, unless the property is taken into custody by court order. **[Exhibit 4, attached Affidavit of Nick Marazita]**

7. Eagle has refused to surrender possession of the Machinery, Molds and inventory.

8. Glacier will suffer irreparable harm unless it receives possession of the Machinery, Molds and Inventory, pending final judgment.

9. Irreparable harm will result to Glacier if it is prevented from fulfilling its contractual obligations to its customers and acquiring new business, including, but not limited to, loss of contracts, loss of customers and loss of reputation in the business community and thus adversely affect the financial condition of Glacier.

10. Eagle is believed to be on the verge of closing its doors altogether.

11. Upon information and belief, Eagle has no money to insure the machinery and has no money to safeguard the machinery.

12. Eagle has waived notice of any claim and delivery action, per Par. 7.4(b) of the Agreement.

13. Glacier prays that no bond be required as a condition of its possessions of the property for the reason that:

a. Eagle waived any bond for writ of replevin ;

c. It is undisputed that Glacier already owns the machinery; and

b. Glacier is solvent, recoverable and fully capable of responding in damages should the court find that any of the allegations that are relied upon in granting interim possession are untrue.

14. Time is of the essence for Glacier to recoup its own machinery, molds and inventory. Therefore, Glacier requests immediate consideration of its motion.

15. Since Eagle waived notice and agreed to immediate possession, per the Agreement.

16. The Machinery are independent pieces of property and have an estimated value of $650,000.

17. The Molds are independent pieces of property and have an estimated value of $400,000.

18. The Inventory are independent pieces of property and have an estimated value of $120,000 after certain setoffs.

WHEREFORE, Glacier requests this Court order the following relief against Eagle:

1. That the Court award immediate possession of the Machinery, Molds and Inventory in question, to Glacier, pending final judgment;

2. That, if and only if, the Court does not follow the stipulation of the parties for an order of immediate possession, it order Eagle to appear before the Court at a specified time to answer this motion and to show cause why Glacier should not be awarded possession of the Machinery, Molds and Inventory;

3. Set an immediate hearing for possession pending final judgment or advance the case for immediate hearing, pursuant to FRCP Rule 65(2);

4. that after the hearing the Court enter its order awarding possession of the Machinery, Molds and Inventory to Glacier and to permit Glacier to immediately enter the premises of Eagle for the purpose of removing the property and requiring Eagle to cooperate in the transfer.

5. That once in Glacier's possession, Glacier may use the Machinery, Molds and Inventory to fulfill its existing contractual obligations and to acquire new customers and contracts involving the Machinery and Molds.

6. Award Plaintiff costs and attorneys fees; and

7. Issue such other relief as the Court deems just.

DAVID W. MOORE, PC

BY: David W. Moore
David W. Moore (P23326)
Attorney for Glacier
900 Wilshire Dr., Suite 202
Troy, MI 48084
(248) 816-8280

I declare the statements above are true to the best of my information, knowledge and belief.

GLACIER

BY: ______________________
Nick Marazita, President

I declare the statements above are true to the best of my information, knowledge and belief.

GLACIER

BY: ______________________

Nick Marazita, President

EXHIBIT 1

EXHIBIT B

The Machinery

1978

- Model 450-420 Excello SN#550-033
- Multi nozzle molding machine
- 104.5 x 86 platens, 86.5 x 68 between tie bars
- 4.5 inch extruders, 200 HP drive
- (4) 20 lb. accumulators
- 80 lb. shot capacity

1977

- Model 400-420 Excello SN#7702
- Multi nozzle molding machine
- 102 x 72 platens, 84 x 54 between tie bars
- 4.5 inch extruders, 200 HP drive
- (4) 20 lb. accumulators
- 80 lb. shot capacity

MACHINE INVENTORY

1. APEX 80 TON
2. VERTICAL SHUTTLE
3. VAN DORN 85 TON
4. VAN DORN 170 TON
5. AUTOMATIC PART PICKER FOR THE 80 TON APEX
6. CHILLER - STERLCO – SN=35D0653 - MODEL # = SMCW-3 5
7. CHILLER - STERLCO SN=35D0807 MODEL # = SEV-F-9-4-2
8. CHILLER - STERLCO - SN=33K5693 MODEL # = SEV-C-9-2-2
9. DRYER – CONAIR-FRANKLIN – SN=D32014 - MODEL # = D60H4000000000
10. DRYER – STERLING – SN=35D0854 – MODEL – STT40
11. ~~FAN – TPI CORP – MODEL # = PB 36-D~~
12. GRINDER – IMS CO - MODEL# = LP-49SC
13. GRINDER - LARGE WITH NO INFO.
14. ASSORTMENT OF TOE CLAMPS FOR MOLDS
15. ASSORTMENT OF WATER MANIFOLDS AND HOSES FOR WATERLINES
16. DME CONTROL BOX – SN = FC37887 – MODEL # = MFFPR2G
17. METLER TOLEDO XPRESS – SN=00306516CG MODEL # = XTC11-4003
18. 1 DESK
19. 1 SMALL FILLING CABENET
20. 1 WALL SHELF
21. 2 WORK BENCHES

MATERIAL INVENTORY

1 440 LBS. BLACK PC/ABS
2 440 LBS. GREY PC/ABS
3 110 LBS. ABS NATURAL
4 400 LBS. PP, 12ML NATURAL PELLETS
5. 55 LBS. CELANEX 3300#2 BLACK
6. 40 LBS. FIBERGLASS, NATURAL
7 80 LBS. UNKNOWN REGRIND
8. 210 LBS. DEXFLEX RUBBER
9 10 LBS. 99S. R-4 TYPE BLACK
10. 15 LBS. ABS REEDLINE DK. GREY
11 30 LBS. GREY ABS REGRIND
12 8 LBS. UNKNOWN VIRGIN
13 200 LBS. WHITE UNKNOWN REGRIND
14 100 LBS. BLACK NYLON
15 80 LBS. 30% GLASS PP
16 500 LBS. UNKNOWN GAYLORD
17. 300 LBS. ENKNOWN GAYLORD
18. 20 LBS. 1ST. GEN. PC/ABS REGRIND
19 30 LBS. 2ND GEN. PC/ABS REGRIND
20 35 LBS. PC/ABS REGRIND

Item	Description	Expected Location
Molds		
SC-100 Top Cap	2-cavity injection Mold	Levan Road
SC-100 Inside Corner Cap	2-cavity injection Mold	Levan Road
SC-100 End Cap	2-cavity injection Mold	Levan Road
Zurn – Sidewall 882	2-cavity structural foam mold	Veronica Ave.
Zurn – Sidewall 886	1-cavity structural foam mold	Veronica Ave.
Zurn – 6 x 20 Catch Basin	2-cavity structural foam mold	Levan Road

EXHIBIT 2

glacier manufacturing

9/3/07

Colleen Dogariu
President
Eagle Plastics Corporation
12001 Levan Road
Livonia, MI 48150
Also sent via:
Fax (734) 462-3265
Email: cdogariu@eagleplasticcorp.com

Subject: Cease Communications with our Customers

Colleen,

I just found out this morning that George has been contacting our customer's directly, sharing confidential information and making disparaging comments, on Glacier Manufacturing's programs and business.

He has contacted Paul Forsburg, President of Millenia Wall Solutions and shared confidential information

I have also been informed by Lou Vizza at Zurn, that George complained about cycle times, and machinery quality to him directly, without us being involved.

I must insist that this **stop immediately**. You or George are not to contact our customers directly without our permission, which we have not, nor ever will give to you or to Eagle.

You are breaking our Non-circumvent and Non-disclosure agreement George signed on behalf of your organization, the confidential information that you are releasing to them is disparaging, and is damaging our relationship with our customer.

As importantly, an Eagle supervisor has informed our contract employee, Dan Roberts, that they believe sabotage was/is happening to our equipment, in an effort to slow our progress and impede our success. I am concerned about the implications of this, both professionally and legally!

Have you retained a lawyer yet – if so, please advise their contact information.

Sincerely,

Nick Marazita
President, Glacier Manufacturing

EXHIBIT 3

7.3 Force Majeure.

(a) The failure of either of the parties hereto to perform any obligation under this Agreement solely by reason of any cause beyond its control (and due to no fault of its own), including, without limitation, acts of God, acts of government, riots, wars, terrorism, strikes and accidents in transportation, shall not be deemed to be a breach of this Agreement; provided, however, that the party so prevented from complying herewith shall continue to take all actions within its power to comply as fully as possible herewith.

(b) If, due to force majeure, Supplier is prevented or expected to be prevented from supplying Glacier with the Product for a period exceeding thirty (30) days, then Glacier shall have the right to terminate this Agreement with immediate effect and upon the request of Glacier, at Glacier's expense, Supplier will provide reasonable assistance in establishing or locating a new manufacturer for the Product.

7.4 Post-Termination Obligations.

(a) Notwithstanding anything else contained herein to the contrary, following any termination of this Agreement, Glacier shall purchase from Supplier (at the most recent applicable price therefor) Supplier's remaining inventory of the Product, such amount not to exceed Glacier's forecasted requirements for the Product, pursuant to Section 4.1 hereof, for the two (2) months immediately following the termination or expiration of this Agreement.

(b) Upon any expiration, termination or receipt of notification of termination of this Agreement, Supplier shall immediately discontinue production of the Product and provide Glacier immediate access to the Supplier's premises for the purpose of removing Glacier's Machinery. Supplier agrees that Glacier shall be entitled to an immediate writ of replevin without notice to Supplier and without posting a bond, or any other mechanism of law, to recover the Machinery if Glacier is not provided immediate access to the Machinery to effect its removal.

ARTICLE 8
OWNERSHIP OF IMPROVEMENTS

8.1 Improvements to Product or Machinery.

(a) Glacier shall have no obligation to modify or improve the Product, Machinery or the designs and Specifications for either.

(b) Any improvements or modifications to the Product or Machinery which are developed by Glacier and/or Supplier (the "Improvements") shall be the exclusive property Glacier. Supplier shall promptly provide written notice to Glacier regarding any Improvements conceived and/or made by Supplier.

8.2 License of Improvements.

(a) Glacier hereby grants to Supplier an indefinite, non-exclusive, nontransferable, non-assignable license (the "License") to manufacture the Product. Upon the

EXHIBIT 4

U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

GLACIER SALES AND ENGINEERING, LLC
a Florida corporation,
Plaintiff

v. Case No.
Hon.

EAGLE PLASTICS CORPORATION
a Michigan corporation
Defendant
_______________________________________/

David W. Moore, PC
David W. Moore (P23326)
Attorney for Plaintiff
900 Wilshire Dr., Ste. 202
Troy, MI 48084
(248) 816-8280
_______________________________________/

AFFIDAVIT OF NICK MARAZITA

STATE OF MICHIGAN)
COUNTY OF)

Nick Marazita, being first duly sworn, deposes and says that upon personal knowledge:

1. I am the president of Glacier Sales and Engineering, LLC, doing business as Glacier Manufacturing ("Glacier").

2. Glacier is in the business of manufacturing plastic parts for its customers.

3. As part of manufacturing process, Glacier subcontracted the manufacturing of various products to Eagle.

4. Glacier provided to Eagle, machines and equipment owned by Glacier, in addition to plastic injection molds, which Eagle was to use to manufacture parts for Glacier.

5. Shortly after entering into the agreement with Eagle, Eagle failed to abide by the agreements, including, but not limited to:

a. became insolvent and/or could not obtain financing for manufacturing of Glacier's products and has ceased operations for Glacier;

b. failed to maintain proper insurance coverage as agreed;

c. terminated substantially all of its employees;

d. has ceased substantially all molding/manufacturing activity at its facilities;

d. refused access to its facilities by Glacier's representative;

c. failed to provide electrical service to Glacier's Machinery;

d. failed to provide water hook ups to Glacier's Machinery;

e. failed to timely provide approved quality product;

f. failed to timely deliver product;

g. failed to provide timely production schedules;

h. failed to provide timely inventory schedules;

i. failed to provide adequate support for Glacier's customers; and

j. failed to properly maintain and secure Glacier's Machinery and Molds such that Glacier was advised of possible tampering or sabotage to the property requested returned to Glacier.

6. Glacier needs the above Machinery, Molds and Inventory as they are essential to Glacier's ability to have products made for its customers and to fulfill its contractual obligations.

7. Glacier cannot conduct business contracted for and contract for new business without the Machinery, Molds and inventory in the possession of Eagle.

8. Glacier has a present possessory interest in the Machinery, Molds and inventory.

9. All Machinery, Molds and inventory are transportable and otherwise depreciable in value. Glacier is fearful and apprehensive that, unless it is granted possession pending final judgment, the property might be moved, lost, conveyed, stolen or otherwise used in a way to substantially impair their value before final judgment, unless the property is taken into custody by court order. **[Exhibit 1, Letter dated September 3, 2007]**

10. Eagle has refused to surrender possession of the Machinery, Molds and inventory.

11. Glacier will suffer irreparable harm unless it receives possession of the Machinery, Molds and Inventory, pending final judgment.

12. Irreparable harm will result to Glacier if it is prevented from fulfilling its contractual obligations to its customers and acquiring new business, including, but not limited to, loss of contracts, loss of customers and loss of reputation in the business community and thus adversely affect the financial condition of Glacier.

13. Upon information and belief, Eagle is on the verge of closing its doors altogether.

14. The property to be transferred to Glacier's possession, sitting at the Eagle facilities, will minimize the irreparable harm to Glacier if possession is given to Glacier. Only irreparable harm can result if the property sits inactive at Eagle.

15. If called as a witness I can testify to the above.

Further deponent saith not.

GLACIER

BY: ______________________
Nick Marazita, President

Subscribed and sworn before me
this ________ day of September, 2007.

____
, Notary Public
State of Michigan, County of ___________
My commission expires: _______________
Acting in the County of Wayne

EXHIBIT 1

glacier manufacturing

9/3/07

Colleen Dogariu
President
Eagle Plastics Corporation
12001 Levan Road
Livonia, MI 48150
Also sent via:
Fax (734) 462-3265
Email: cdogariu@eagleplasticcorp.com

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I have also been informed by Lou Vizza at Zurn, that George complained about cycle times, and machinery quality to him directly, without us being involved.

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You are breaking our Non-circumvent and Non-disclosure agreement George signed on behalf of your organization, the confidential information that you are releasing to them is disparaging, and is damaging our relationship with our customer.

As importantly, an Eagle supervisor has informed our contract employee, Dan Roberts, that they believe sabotage was/is happening to our equipment, in an effort to slow our progress and impede our success. I am concerned about the implications of this, both professionally and legally!

Have you retained a lawyer yet – if so, please advise their contact information.

Sincerely,

Nick Marazita
President, Glacier Manufacturing

U.S. DISTRICT COURT
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______________________________/

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(248) 816-8280

______________________________/

BRIEF IN SUPPORT OF
EMERGENCY MOTION FOR POSSESSION PENDING FINAL JUDGMENT

CONCISE STATEMENT OF ISSUES

I. WHETHER POSSESSION PENDING FINAL JUDGMENT IS PROPER.

II. WHETHER GLACIER WILL PREVAIL ON THE MERITS OF POSSESSION.

III. WHETHER GLACIER WILL INCUR IRREPARABLE HARM IF INJUNCTIVE RELIEF IS NOT GRANTED.

IV. WHETHER EAGLE WILL SUFFER SUBSTANTIAL HARM IF RELIEF IS GRANTED.

V. WHETHER THERE IS HARM TO THE PUBLIC INTEREST IF INJUNCTIVE RELIEF IS GRANTED.

CONTROLLING AUTHORITY

FRCP Rule 64 and 65

MCR Rule 3.105

MCL 600.2920

Introduction

Glacier transferred possession of machines, molds, equipment and materials to Eagle so that Eagle could manufacture various plastic parts for Glacier. Eagle defaulted and violated the contract. Glacier brings this motion, pursuant to FRCP Rule 64, MCL 600.2920 and MCR Rule 3.105, in conjunction with a motion for a temporary restraining order and permanent injunction, to preserve and protect Glacier and the property requested returned, in addition to allowing Glacier to conduct business and preventing irreparable harm to Glacier.

FACTS

Glacier was in the business of manufacturing/molding various products for its customers. Glacier, at times, would subcontract the molding/manufacturing of those parts. In the case at bar, Eagle was a subcontractor of Glacier **[Exhibit 1]**.

Glacier owned various machines, equipment and raw materials [Exhibit 2, verified complaint]. In addition, Glacier possessed certain injection molds so that it could fulfill customer obligations. In order to accomplish the subcontract, Glacier transferred possession of the machines, equipment, materials and molds to Eagle, for Eagle to use in fulfilling Glacier's contracts with its customers.

Eagle breached the agreement with Glacier and failed to perform various acts, more specifically enumerated in Glacier's motion which jeopardized Glacier's contracts with its customers, resulting in Glacier termination the agreement with Eagle. Eagle has refused to allow access to the property and to surrender that which Glacier transferred to it. In addition, Eagle has refused to transfer the inventory which Glacier owns and its customers need.

ARGUMENT

I. POSSESSION PENDING FINAL JUDGMENT IS PROPER.

Possession pending final judgment is proper pursuant to MCL 600.2920, MCR Rule 3.105 and FRCP Rule 64. As previously stated in the complaint and motion for possession, Glacier has a possessory right to the property requested. Eagle is in breach of its obligations. The parties contracted that upon a termination of the agreement, Eagle agreed to immediate possession in favor of Glacier. Furthermore, Eagle waived notice and a bond. This agreement is consistent with the intent and the equities in favor of Glacier. Regardless of whether Eagle agreed to immediate possession, Glacier was still entitled to the return of the property which it allowed Eagle to use.

Eagle has terminated a substantial number of employees and its operations are nearly shutdown. In addition, Glacier is fearful that the property will be damaged, concealed, disposed of, or used so as to substantially impair its value before final judgment, unless the property is taken into custody by Glacier. The letter of Nick Marazita [**Exhibit 3**] alludes to some of the fears of Glacier. In addition, it is believed that Eagle has no insurance covering the property. It is believed to be insolvent or near insolvent and cannot afford the insurance or security to ensure that the property is safeguarded and does not have its value substantially impaired.

In addition, there is no adequate remedy at law since Eagle has no money in which to pay millions of dollars in damages. Glacier's reputation and lack of business will have irreparably suffered so much as to render any damages moot.

Glacier asserts that it has shown good cause that it should be granted possession of the property pending final judgment and for injunctive relief.

INJUNCTIVE RELIEF

In determining whether a preliminary injunction or temporary restraining order should be issued, the court can consider various factors, such as: i) the likelihood that the party seeking the injunction will prevail on the merits, ii) the danger that the petition will suffer irreparable harm, iii) the risk that the petitioner would be harmed more by not granting the injunctive relief, that the opposing party would be harmed by granting the injunctive relief, and iv) any harm to the public interest if the injunctive relief is granted.

II. GLACIER WILL PREVAIL ON THE MERITS

Glacier owned the machine and equipment which it allowed Eagle to use and had a possessory interest in the molds, as Glacier was the caretaker of the molds. By agreement, Eagle agreed to an immediate possession of what was given to Eagle. It is inconceivable that Glacier would not be allowed the return possession of what it owned. It is common sense and the practice in the industry that when a subcontractor does not perform further, the contractor is allowed to retrieve that which was given, so that the contractor can continue to fulfill its contractual obligations.

III. GLACIER WILL SUFFER IRREPARABLE HARM IF INJUNCTIVE RELIEF IS NOT GRANTED.

As noted in the complaint and motion for possession, Eagle has refused access to its facilities by Glacier. Eagle has refused to surrender the property requested. The property requested is transportable and depreciable. Glacier has real concerns that the property will be damaged, stolen, moved, or diminished in value, by the continued

V. NO HARM TO PUBLIC INTEREST IF INJUNCTIVE RELIEF.

The public interest will not be harmed by the granting of injunctive relief. To the contrary, the public interest will be served by the granting of the injunctive relief, as it is preserving property and allowing a business to fulfill its contractual obligations. Public interest encourage commerce and the manufacturing of products. To require that contracts of Glacier be defaulted upon by Glacier because property it needs is sitting idly at a near vacant facility runs counter to common sense and equity. Accordingly, public interest is enhanced by granting the injunctive relief.

Accordingly, for the reasons stated in the complaint, verified motion for possession, affidavit and this brief, Glacier requests the Court to grant the relief requested in those pleadings.

DAVID W. MOORE, PC

BY: David W. Moore
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